



PROFESSIONAL SERVICES

Section

15-00.0100

Subject

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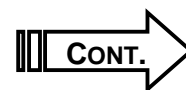


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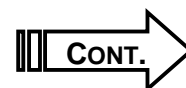
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15-01.0100 INTRODUCTION

The *Professional Services Guidance Manual* is designed to assist the Transportation Cabinet in contracting for professional engineering and related services with individuals and with firms. This manual shall serve as a uniform guide to Cabinet offices and divisions in the interpretation and administration of the legislation, policies, procedures, and administrative regulations that relate to the procurement of professional services.

Chapter 15-02 discusses the procurement authority of the Transportation Cabinet and the legislation and regulations governing professional engineering and related services. Also included is the exemption from competitive bidding for the contracting of professional services.

Chapters 15-03 through 15-07 include detailed procedures for the procurement of professional engineering and related services. The Cabinet's prequalification and selection procedures are described as well as the required approval procedures prior to the execution of the contract. The section describing contract administration includes contract modifications, contract monitoring, completion of a contract, and the procedures to cancel a contract. Procedures for payment under a contract are described and include the requirements of the Finance and Administration Cabinet. Record retention requirements are also discussed. Chapter 15-08 includes procedures for the selection of other professional services utilized by the Cabinet.

Each of the forms used in contracting for professional engineering and related services and the applicable state statutes are referenced throughout the manual and are included as exhibits.

The manual shall be revised as necessary to include any changes or additional procedures.

The following pages in this section list the code of ethics and provide a brief overview of the procedures to follow when contracting for professional engineering and related services.

15-01.0200 PROFESSIONAL ENGINEERING AND RELATED SERVICES **PROCUREMENT AUTHORITY**

The Transportation Cabinet has the authority to contract for professional services subject to Legislative Research Commission (LRC) approval under KRS 45A, the Model Procurement Code.

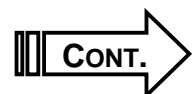


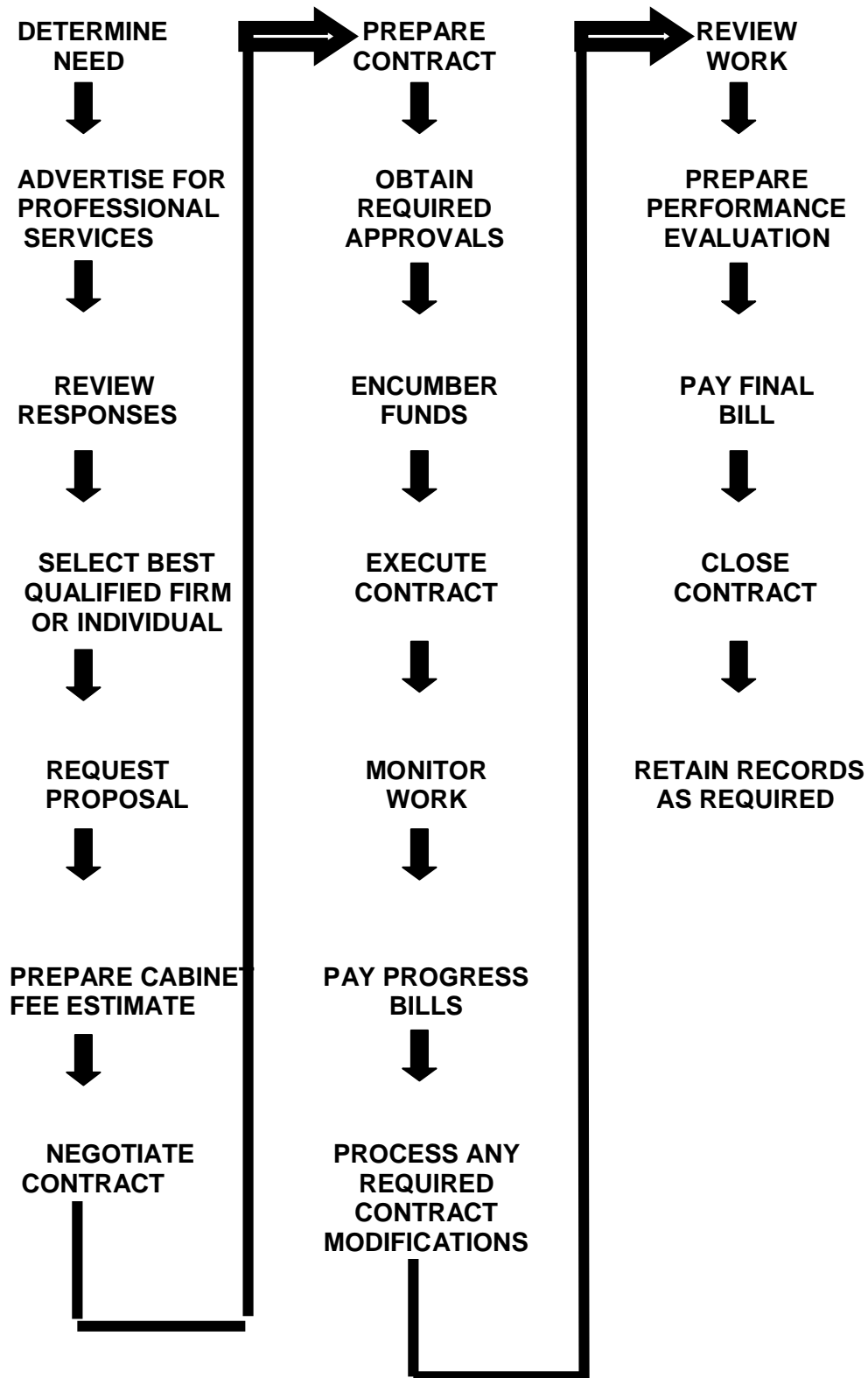
15-01.0300 CODE OF ETHICS

All Cabinet personnel are to subscribe to the following:

- Ø Consider the interests of the Commonwealth of Kentucky and the Transportation Cabinet first when contracting for professional services.
- Ø Request and accept assistance from other Cabinet and state personnel as required without allowing it to impair the dignity and responsibility of the employee's position.
- Ø Seek to obtain the maximum value for each dollar spent for professional services.
- Ø Strive for honesty and truth in contracting.
- Ø Denounce all forms of bribery or favors.
- Ø Invite all qualified professionals to submit their qualifications for consideration by the Cabinet.
- Ø Assist other Cabinet personnel in the contracting for professional services as necessary.

All persons involved in the procurement of professional services shall scrupulously comply with both the letter and the spirit of Kentucky Revised Statutes (KRS) Chapter 11A, the "Executive Branch Code of Ethics" (**Exhibit 15-01**), pertaining to standards of ethical conduct in the Executive Branch; KRS 45A.340, "Conflicts of Interest of Public Officers and Employees" (**Exhibit 15-02**); and *House Bill (HB) 242* (**Exhibit 15-04**).



15-01.0400 FLOW CHART FOR CONTRACTING PROFESSIONAL SERVICES

CONT.

15-01.0500 DEFINITIONS

AWARD:	The presentation of an agreement or contract to a professional
CABINET:	Kentucky Transportation Cabinet
CHANGE ORDER:	An agreement using the TC 40-17 form, <i>Contract Modification (Exhibit 15-05)</i> , modifying the existing agreement, such as an agreement to provide for extra work
CHARGEABLE PAYROLL COSTS:	Payroll costs related to specific work
COMPETITIVE NEGOTIATION:	<p>A method of contracting when competition is feasible</p> <p>When the Transportation Cabinet determines in writing, based on regulations issued by the Finance and Administration Cabinet, that the use of competitive bidding is not practical, the Transportation Cabinet may contract using competitive negotiation. For architectural and engineering and related services, the Transportation Cabinet follows the contracting policy of the Commonwealth as explained in KRS 45A, including public announcement of the project, evaluation of qualifications of firms prequalified, and discussions with three firms.</p>
CONSULTANT:	An individual or firm under contract with the Cabinet to perform engineering and related services on a specific project
CONTRACT:	<p>All types of state agreements, including grants and orders for the purchase or disposal of supplies, services, or any other item</p> <p>It also includes contracts of a lump sum; cost plus a fixed fee, or incentive type; contracts providing for the issuance of job or task orders; letter contracts; and purchase orders.</p>
CONTRACT MODIFICATION:	An alteration of a contract that introduces new details or cancels details but leaves the general purpose and effect of the contract intact
COST PER UNIT OF WORK:	A price based on units when the extent of work cannot be defined but a cost of the work per unit can be determined in advance with reasonable accuracy
COST PLUS A FIXED FEE:	A price based on the actual allowable cost of the work plus a pre-established fixed amount for profit
DEPARTMENT:	Kentucky Department of Highways
DIRECT SALARY:	Salary of person(s) directly involved with and chargeable to a specific project (i.e., engineering or technician time spent on a project)



FIRM: A business or individual providing engineering and related services to the Transportation Cabinet in accordance with KRS 45A

FORMAL ANNOUNCEMENT: The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the Cabinet is requesting qualifications for a specific project

GENERAL PROVISIONS: An addendum to the contract, which is referenced within the agreement **(Exhibit 15-06)**

LUMP SUM: A fixed price, including cost and profit, agreed upon between the professional and Cabinet for a group of tasks without breakdown of individual values—a lot price

MODIFICATION: Any formal revision to the terms of a contract

NONCHARGEABLE PAYROLL COSTS: Payroll costs not directly related to specific client work but incurred for a more general purpose

NONCOMPETITIVE NEGOTIATION: Method of contracting when competition is not feasible

Contracts for professional, technical, scientific, or artistic services may be entered into using noncompetitive negotiation.

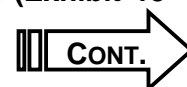
OVERHEAD COSTS: Indirect costs, including salaries and other costs, not chargeable to any specific project

These costs normally support the different projects with which a firm is involved. Examples of indirect costs are accounting, general maintenance and repair, building rent, utilities, and furniture.

PON (Proof of Necessity): Form used to justify and request permission from the Legislative Research Commission Personal Services Contract Review Subcommittee to employ consulting engineers, architects, appraisers, attorneys, consultants, and others **(Exhibit 15-07)**

PREQUALIFICATION: The evaluation of potential professionals in which the Cabinet considers such factors as financial capability, reputation, and management skills in order to develop a list of professionals qualified to contract with the Cabinet for professional engineering and related services

PREQUALIFICATION CATEGORY: Any type of project for which engineering and related services are contracted and as identified on Page 2 of the TC 40-1 form, *Consulting Engineer and Related Services Prequalification Application* **(Exhibit 15-08)**



PRIME FIRM:	A firm or individual that is contracted to provide defined professional services
PROFESSIONAL:	Individual or firm of recognized technical competence
PROFESSIONAL EMPLOYMENT CONTRACT:	A contract for professional, technical, scientific, or artistic services exempted from competitive bidding
PROFESSIONAL ENGINEER:	An individual or firm licensed to practice engineering in the Commonwealth of Kentucky under KRS Chapter 322
PROFESSIONAL ENGINEERING AND RELATED SERVICES:	Specialized engineering or other related professional services performed by individuals or firms of recognized technical competence, education, and/or experience, that are involved in the planning, design, construction, operation, and maintenance of transportation systems
PROFESSIONAL SERVICES:	Specialized services performed by individuals or firms of recognized technical competence
PROJECT:	Any undertaking by the Transportation Cabinet requiring the contracting of services of an engineer, engineering firm, architect, or other professional of technical expertise
PROJECT SUPERVISOR:	The director of the user division or person designated by the division director to oversee the performance of a firm to perform contracted services on a project
PROPOSAL:	An offer made by the professional to the Cabinet as a basis for negotiations for entering into a contract
SALARY ADDITIVES:	Employer-paid fringe benefits including employer portion of FICA, hospitalization, group life insurance, unemployment contributions to the state, and other such benefits
SCOPE OF WORK:	All services and actions required of the professional by the contract
SERVICES:	The rendering by a professional of its time and effort rather than the furnishing of a specific end product other than reports, which are merely incidental to the required performance or service



SPECIFIC RATES OF

COMPENSATION: A price that includes all direct salary costs, salary additives, indirect costs, and the net fee. Supporting data must identify these cost elements.

SPECIAL

PROVISIONS: A section within the agreement that states terms and/or conditions that apply only to the subject contract for its duration as a result of project-specific circumstances or events

SUBCONTRACTOR: An individual or firm contracted to a prime firm for the performance of the work contracted to the prime firm by the Cabinet


TERMINATION

CLAUSE: A contract clause that allows the Cabinet to terminate, at its own discretion, the performance of work in full or in part and to make settlement of the professional's claims in accordance with appropriate regulations

USER DIVISION: A division or office within the Transportation Cabinet that requires the procuring of engineering and related services for a project

Where the Cabinet is procuring consultant services in conjunction with another agency, governmental entity, or state, that unit outside the Transportation Cabinet may be designated as a co-user division.

2 2 2

 PROFESSIONAL SERVICES	<i>Chapter</i> 15-02
	<i>Subject</i> Regulatory Requirements

15-02.0100 STATE REGULATORY REQUIREMENTS

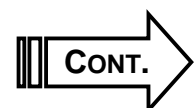
- .0110 Negotiations:** The Kentucky Revised Statutes (KRS) and the Kentucky Administrative Regulations (KAR) provide that contracts for professional, technical, scientific, and artistic services may be made by noncompetitive negotiation (KRS 45A.095 and 600 KAR 1:101). The Secretary of Transportation is to determine that competition is not feasible for professional engineering and other related services contracted by the Transportation Cabinet in accordance with KRS 45A.095.

Professional service contracts for architectural and engineering and related services are negotiated based on demonstrated competence in and qualification for services required at fair and reasonable prices (KRS 45A).

- .0120 Legislative Research Commission:** Professional service contracts or their modifications cannot be awarded until the contract or modifications have been submitted to the Legislative Research Commission Personal Services Contract Review Subcommittee for examination and receipt has been returned to the Cabinet (KRS 45A.830).

15-02.0200 FEDERAL REGULATORY REQUIREMENTS

For highway projects funded in part by federal-aid funds, the Transportation Cabinet is regulated by Title 23 of the United States Code (USC) and Code of Federal Regulations 23 CFR and 49 CFR 18.0 (The Common Rule).



- .0210 Engineering Services:** The Federal Highway Administration (FHWA) has approved the Transportation Cabinet's procedure of contracting for professional services for federal-aid projects funded under 23 USC. As a result of this approval, the Cabinet is not required to submit contracts or contract modifications to FHWA for approval if the project does not require FHWA oversight under the 1998 Transportation Equity Act for the 21st Century (TEA-21). Federal oversight includes all projects involving interstates, demonstration funding, or major bridges, including river crossings between states. If FHWA requires federal oversight for the project, FHWA approval of the contract and all contract modifications is required prior to submission to the Legislative Research Commission Personal Services Contract Review Subcommittee.
- .0220 Audit of Federal Projects:** All federal-aid proposals that exceed \$250,000 shall have an audit examination of the firm made in accordance with the cost principles set forth in Federal Acquisition Regulations 48 CFR Chapter 1, Part 31.
- .0230 Affirmative Action:** Whenever possible, disadvantaged business enterprises are to be used as sources of supplies, equipment, construction, and services. Affirmative steps include the following:
- Ø Place qualified small and minority businesses on solicitation lists.
 - Ø **Assure that small and minority businesses are solicited whenever they are potential sources.**
 - Ø When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small- and minority-business participation.
 - Ø Where the requirement permits, establish delivery schedules that encourage participation by small and minority businesses.
 - Ø Require use of services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Economic Development Cabinet, and the Community Services Administration
 - Ø If any subcontracts are to be let, require the prime firm to take the affirmative steps identified above.
 - Ø Advertise projects that are exclusively designated for contracting engineering and related services with Disadvantaged Business Enterprises.
- .0240 Federal Compliance for Subconsultants:** The Cabinet is to be in compliance with 23 CFR 172. All provisions pertaining to prime firms shall also pertain to subconsultants.




- .0250 Noncompetitive Negotiation:** Noncompetitive negotiation may be used to obtain engineering and other related services when the award of a contract is not feasible under small purchase or competitive-negotiation procedures. The contracting agency is to submit justification and receive approval from the FHWA before using this form of contracting when federal-aid highway funds are used in the contract.

Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to any one of the following:

- Ø The service is available only from a single source.
- Ø There is an emergency that will not permit the time necessary to conduct competitive negotiations.
- Ø After solicitation of a number of sources, competition is determined inadequate.

2 2 2

 PROFESSIONAL SERVICES	Chapter 15-03
	Subject Prequalification

15-03.0100 PREQUALIFICATION FOR PROFESSIONAL ENGINEERING AND RELATED SERVICES

.0110 Purpose: To be considered for a contract to provide professional engineering and related services for the Transportation Cabinet, a firm is to meet the Cabinet's prequalification requirements before responding to a Cabinet advertisement for professional services. The Division of Professional Services is to ensure that the Cabinet has at its disposal and available for use a current list of prequalified consulting engineering firms and other professionals.

.0120 Application & Review: A firm desiring consideration for prequalification is to complete the applicable qualification questionnaire pertaining to the services for which prequalification is desired. These forms include:

- Ø TC 40-1 form, *Consulting Engineer and Related Services Prequalification Application (Exhibit 15-08)*
- Ø TC 64-540 form, *Prequalification Requirements for Geotechnical Drilling Services (Exhibit 15-09)*
- Ø TC 64-541 form, *Prequalification Requirements for Geotechnical Engineering Services (Exhibit 15-10)*
- Ø TC 64-542 form, *Prequalification Requirements for Geotechnical Laboratory Services (Exhibit 15-11)*

Upon return of these forms to the Division of Professional Services, a review of the firm's qualifications is to be requested from the appropriate user division or office.

.0121 Prequalification Categories: Prequalification categories used by the Cabinet are identified on Page 2 of the TC 40-1 form, *Consulting Engineer and Related Services Prequalification Application (Exhibit 15-08)*

.0122 Criteria for Prequalification: Written criteria for prequalification in the categories identified on Page 2 of the TC 40-1 form are shown in the appendix to the TC 40-1 form, *Consulting Engineer and Related Services Prequalification Criteria (Exhibit 08A)*.



.0130 Notification to Firms: The list of prequalified consultants is to be modified to reflect the action taken by the user division or office. The Director, Division of Professional Services, as chairperson of the Consultant Prequalification Committee, is to notify each firm of all actions involving that firm. In cases of disapproval for any services, the director is also to notify the firm of the appeals procedure as outlined herein.

.0140 Consultant Prequalification Committee: The members of the Consultant Prequalification Committee are as follows:

- Ø Director, Division of Professional Services, Chairperson
- Ø Director, Division of Construction
- Ø Director, Division of Multimodal Programs
- Ø Director, Division of Aeronautics
- Ø Director, Division of Traffic Operations
- Ø Director, Division of Highway Design
- Ø Director, Division of Maintenance
- Ø Director, Division of Bridge Design
- Ø Director, Division of Materials
- Ø Director, Division of Planning
- Ø Director, Division of Environmental Analysis

The committee is to consider appeals for firms that wish to be considered for consulting work by the Cabinet but have been denied prequalification by the user division or office.

The Division of Professional Services is to provide necessary administrative and technical support to the committee and is to maintain all pertinent information for the committee.

.0150 Appeals Procedure for Firms Not Approved for Prequalification: A firm may appeal any disapproval to the Consultant Prequalification Committee. Any appeal is to be made in writing to the chairperson of the Consultant Prequalification Committee within 30 days of notification of disapproval. The letter to the chairperson is to state the basis of the appeal. Within 60 days from receipt of an appeal, the committee is to review the appeal and make a decision regarding it. If the firm agrees, the committee may delay a decision for up to an additional 60 days while the committee meets with the firm to discuss the appeal. The committee shall notify the State Highway Engineer and the firm of its decision.

If the appeal is denied, the firm may appeal the decision to the State Highway Engineer within 30 days of written notice of the denial by the Consultant Prequalification Committee. The State Highway Engineer is to notify the firm of his or her decision within 30 days. The decision of the State Highway Engineer is final.



- .0160 Changes in Firm's Qualification Information:** Prequalified firms are to notify the Division of Professional Services of any major changes either increasing or decreasing the firm's professional or financial qualifications, capabilities, personnel, etc., or a change of address.

The user division or office is to review the updated information received from the firm and reclassify the firm as appropriate with respect to types of work and capacity of the firm.

If a prequalified firm fails to notify the Division of Professional Services of its change of address, the firm may be removed from the list of prequalified firms until it notifies the division of its new address. If the change of address notification is submitted to the division during what would have been the firm's prequalification year and no other changes have occurred in the firm, the firm is to be restored to the list of prequalified firms. Removal from the list of prequalified firms due to lack of notification of an address change is not a basis for appeal.

- .0170 Conditional Prequalifications:** The user division or office or the Consultant Prequalification Committee may grant conditional prequalification to a firm if:

- Ø The firm has no direct highway or transportation experience but has identified personnel who have technical training or education and other types of experience that may allow the firm to perform the regulated services or
- Ø The firm performed poorly on past projects for the Department or has been removed from the list of prequalified firms for performance-related reasons and has restructured itself to address the problems

After the firm has performed services for the Cabinet in the category of work for which it was conditionally prequalified, it may request a prequalification determination from the user division or office.

Denial of conditional prequalification of a firm to perform services for the Cabinet is not eligible for appeal.

- .0180 Annual Submission of Prequalification Application:** Prequalified firms are to annually submit qualification and performance data on or prior to their anniversary dates of prequalification. Annual application shall include one original and one copy of the application for each functional area requested and one original and one copy of a current marketing brochure, unless otherwise communicated to the firm verbally or in writing.

- .0190 Removal from Prequalification List by the Prequalification Committee:** The Consultant Prequalification Committee may remove a firm from the list of prequalified firms for the following reasons:

- Ø Failure to submit an annual application on the anniversary date of the firm's initial application



- Ø Falsification of the firm's prequalification application as to qualifications
- Ø Falsification of the firm's TC 40-15 form, *Response to Announcement for Engineering and Related Services as Prime Consultant (Exhibit 15-12)*, for any project
- Ø Violation of KRS Chapter 11A, "Executive Branch Code of Ethics" (**Exhibit 15-01**)
- Ø Falsification of information provided to the Cabinet for audit purposes
- Ø Failure to keep its firm license current with the Kentucky State Board of Registered Professional Engineers and Land Surveyors
- Ø Failure to notify the Cabinet within 30 days of the loss of personnel that has an impact on the firm's prequalification or project management
- Ø Violation of certification that the firm's owner, principals, or partners, or any of their family members, having an interest of 10 percent or more in any business entity involved in the performance of the contract have not contributed more than the amount specified in KRS 121.056(2) (**Exhibit 15-20**) to the election campaign of the current governor


The chairperson of the prequalification committee shall notify the firm in writing of its proposed removal and the reasons for removal.

.0200 Appeals Procedure for Firms Removed from the Prequalification List by the Prequalification Committee: Firms removed from the prequalification list by the Consultant Prequalification Committee may appeal to the committee. Any appeal is to be made in writing to the chairperson of the committee within 30 days of notification of removal. The letter to the chairperson is to state the basis for the appeal. Within 60 days from receipt of an appeal, the committee is to review the appeal and make a decision regarding it. If the firm agrees, the committee may delay a decision for up to an additional 60 days while the committee meets with the firm to discuss the appeal. The committee is to notify the State Highway Engineer and the firm of its decision.

If the appeal is denied, the firm may appeal the decision to the State Highway Engineer within 30 days of written notice of the denial. The State Highway Engineer is to notify the firm of his or her decision within 30 days.

If the appeal is denied again, the firm may appeal the decision to the Secretary of Transportation within 30 days of written notice of the denial. The Secretary's decision will be issued within 30 days and is final.

2 2 2

 PROFESSIONAL SERVICES	<i>Chapter</i> 15-04
	<i>Subject</i> Selection Process

15-04.0100 SELECTION OF PROFESSIONALS FOR ENGINEERING AND RELATED SERVICES

.0110 Purpose: To select the most-qualified firm to perform engineering and related services for the Transportation Cabinet when state personnel cannot perform the work due to unavailability of personnel, time restrictions, or lack of specialized skills

.0120 Policy: It is the policy of the Kentucky Transportation Cabinet to:

- Ø Ensure the fair and equitable treatment of all qualified individuals or firms interested in providing professional engineering and related services for the Cabinet
- Ø Announce publicly all requirements for professional engineering and related services
- Ø Award a contract for professional engineering and related services to the firm most-qualified to perform the work on a project on the basis of demonstrated competence and qualification for the required type of professional services at fair and reasonable prices
- Ø Afford responding firms in all regions of the Commonwealth equal consideration for selection

15-04.0200 APPROVAL FOR USE OF A CONSULTANT

When seeking to engage a consulting firm to perform professional engineering and related services for a project, the State Highway Engineer is to obtain the written approval of the Secretary of Transportation. The Secretary of Transportation is to approve the evaluation factors and relative weights placed on the factors that appear in the public announcement.

The user division is to recommend evaluation factors and their relative weights for a project. Generally, the division is to select on the basis of the following factors:

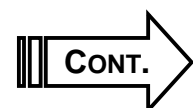


- Ø Relative experience of consultant personnel assigned to project team:
 - Experience with highway projects or projects on another mode of transportation or with intermodal transportation projects for the Kentucky Transportation Cabinet
 - Experience with highway projects or projects on another mode of transportation or with intermodal transportation projects for federal, local, or other state governmental agencies
- Ø Capacity to comply with project schedule
- Ø Past record of performance on a project of a similar type and complexity
- Ø Project approach and proposed procedures to accomplish the services for the project
- Ø Location of the office where the tasks are to be performed
- Ø Special or unique expertise
- Ø Special or unique equipment
- Ø Familiarity with geographic areas and resources

Because of the uniqueness or complexity of a project, the user division may recommend evaluation factors or relative weights different from the above. The evaluation factors and the relative weights are to appear in the public announcement.

15-04.0300 ANNOUNCEMENT OF THE NEED FOR PROFESSIONAL ENGINEERING AND RELATED SERVICES

- .0310 Preparation of Procurement Bulletin for Engineering and Related Professional Services:** The Division of Professional Services is to prepare a procurement bulletin for professional engineering and related services for the announcement of projects to the general public. The procurement bulletin is to include:
- Ø A discussion of procedures to follow for submission of a response to the project
 - Ø Evaluation factors and their relative weights
 - Ø A general scope of the project (provided by the user division)
 - Ø An anticipated project schedule (provided by the user division)
 - Ø Disadvantaged Business Enterprise (DBE) use
 - Ø A list of firms prequalified in each applicable category as of the date of the bulletin
 - Ø A timetable for the selection committee's meetings for the project



- Ø Other materials that may assist firms in responding to the announcement
- Ø Deadline for filing responses
- Ø The procurement bulletin may require the initial solicitation of a complete work price and qualification proposal.

.0311 Statewide Services: The announcement for statewide professional engineering and related services may specify more than one firm to be selected to provide the services indicated in the procurement bulletin. Such statewide services may include:

- Ø Aerial and photogrammetric services
- Ø Aerial and photography services
- Ø Aeronautics
- Ø Biological and ecological studies
- Ø Bridge design
- Ø Construction
- Ø Cultural and historical studies
- Ø Environmental services
- Ø Environmental studies
- Ø Geo-tech drilling
- Ø Geo-tech engineering and laboratory testing
- Ø Geotechnical services (e.g., drilling)
- Ø Highway design
- Ø Multimodal
- Ø Multimodal (consulting services)
- Ø Pavement rehabilitation design
- Ø Planning
- Ø Standard structure design
- Ø Structural steel inspection
- Ø Surveying
- Ø Traffic operations
- Ø Underground storage tanks
- Ø Underwater bridge inspection
- Ø Value engineering

.0320 Distribution of Procurement Bulletin: The procurement bulletin is to be posted on a web page. An announcement of the availability of the procurement bulletin is to be published in at least two newspapers of general multicounty circulation and one newspaper that has minorities as its targeted readership.

.0330 Responses to Announcements: Prequalified firms are to send their responses to the announcement to the Division of Professional Services. All prequalified firms responding to the announcement for preconstruction-related engineering or other related professional services are to submit the number of copies of the completed TC 40-15 form, *Response to Announcement for Engineering and Related Services as Prime Consultant* (Exhibit 15-12), requested in the announcement. Firms not responding with the correct number of copies or those providing incomplete information on their responses to the announcement are not to be considered for selection.



Firms using subconsultants are to attach to their responses to the announcement a completed TC 40-15 Sub form, *Response to Announcement for Engineering and Related Services (Exhibit 15-12A)*, for each subconsultant used.

.0331 Firms Not Prequalified: To be considered for a project that appears in the procurement bulletin, a firm must be prequalified in the specified areas prior to the response due date, which appears in the bulletin for a particular project. The Division of Professional Services is to certify to prequalification committee members the prequalification status of each firm on the TC 40-8 form, *Listing of Responding Firms (Exhibit 15-14)*, the same form used to certify responses.

.0340 Certification of Responses to Announcements: Using the TC 40-8 form, *Listing of Responding Firms (Exhibit 15-14)*, the Division of Professional Services is to prepare a list of all firms that responded on or before the deadline specified in the procurement bulletin and that submitted the appropriate number of copies of the requested forms. The Director, Division of Professional Services, or designee, is to certify the *Listing of Responding Firms*.

The Division of Professional Services is to return to the submitting firms the responses received after the deadline or with fewer copies of responses than requested and is not to list these firms on the selection evaluation for consideration to perform the project.

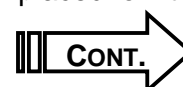
.0350 Confidentiality of the List of Responses: The list of responses to the announcement is to be kept confidential until the contract has been negotiated and executed and the selected firm has received a notice of approval for payment from the Division of Professional Services. (Refer to **Section 15-05.1110.**)

15-04.0400 PROFESSIONAL ENGINEERING AND RELATED SERVICES SELECTION COMMITTEE

.0410 Purpose: A Professional Engineering and Related Services Selection Committee is to be created for a project or group of projects when the Transportation Cabinet procures professional engineering and related services.

.0420 Membership: The committee is to consist of six members selected in the following manner:

Ø **Two Professional Engineers (from the pool):** The Secretary, or designee, under the supervision of the Auditor of Public Accounts, or designee, is to randomly select engineers from the pool established in accordance with **Section 15-04.0450**. The first employee selected is to be placed on the selection committee. To ensure the inclusion of at least one merit employee, if the first employee selected is a merit employee, the second employee selected shall be placed on the selection committee. If the first employee selected is a nonmerit employee, the selection process is to continue until a merit employee is selected. That merit employee is to be placed on the selection committee.



- Ø **Two Professional Engineers (from the user division):** The director of the user division that will be responsible for monitoring the professional services is to appoint two merit professional engineers from either the user division or the same functional area in the district where the project is located. If the user division does not have two professional engineering merit employees or if the services in the announcement are for related professional services other than engineering, the director is to appoint two merit employees who have familiarity and experience related to the services that are being contracted. If the director is a merit employee, the director may appoint herself or himself to the committee.
 - Ø **An Individual from Outside Executive Branch:** The Kentucky Society of Professional Engineers together with the Consulting Engineers of Kentucky is to nominate nine individuals who are not employees of the Executive Branch of state government. The Governor is to appoint three of these individuals to serve in the pool from which the Secretary of Transportation, or designee, under the supervision of the Auditor of Public Accounts, or designee, is to randomly select one individual to serve on the committee.
 - Ø **A Merit Employee from the Office of the Auditor of Public Accounts:** The Auditor of Public Accounts shall appoint a merit employee of his or her office to serve as a nonvoting member of the committee.
- .0421 Co-User Divisions:** If the services being announced involve approximately equal or separate responsibilities for the project(s) for two divisions (or other units requiring the procurement of services), upon approval by the Director of the Division of Professional Services, each co-user division is to appoint one committee member as indicated herein.

In cases where the Cabinet is procuring consultant services in conjunction with another agency, governmental entity, or state, that unit outside the Transportation Cabinet may be designated as a co-user division for the purpose of having one representative on the selection committee.

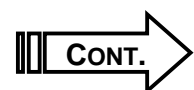
.0430 Qualifications for Committee Members:

All Professional Engineering and Related Services Selection Committee members are to meet the following requirements:

- Ø All committee members are to have experience that qualifies them to serve on the committee.
- Ø No employee of the Transportation Cabinet is required to involuntarily serve as a member of the committee.
- Ø All committee members are to complete a TC 40-9 form, *Certificate of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee* (**Exhibit 15-15**). This form certifies that a committee member understands and will abide by the following restrictions while serving on the committee:



- A person is not to serve in a pool from which selection committee members are drawn or on a selection committee if that person, his or her spouse, parent, sibling, or child (1) is employed by a firm that has been prequalified by the Transportation Cabinet for services relevant to the selection process pursuant to **Section 15-03.0110** or (2) owns 1 percent or more of a firm that the Transportation Cabinet has prequalified for services relevant to the selection process pursuant to **Section 15-03.0110**.
- If in the course of an individual's service, that person, his or her spouse, parent, sibling, or child becomes employed by a firm that has been prequalified by the Transportation Cabinet for services relevant to the selection process pursuant to **Section 15-03.0110** or owns 1 percent or more of a firm that has been prequalified by the Transportation Cabinet relevant to the selection process pursuant to **Section 15-03.0110**.
- For a period of one year after a person ends service on a selection committee, the Commonwealth shall not consider a firm for any engineering and related services contract if that person or his or her spouse, parent, sibling, or child is employed by a firm that has been awarded a contract by a selection committee of the Transportation Cabinet for services relevant to the selection process pursuant to **Section 15-03.0110** or owns 1 percent or more of a firm that has been awarded a contract by a selection committee of the Transportation Cabinet on which he or she served.
- If the individual, randomly selected to serve on the committee in accordance with the requirements for membership listed above, is an employee of a consulting firm that the Transportation Cabinet has prequalified for services relevant to the selection process pursuant to **Section 15-03.0110** or owns 1 percent or more of a firm that has been prequalified by the Transportation Cabinet for services relevant to the selection process pursuant to **Section 15-03.0110**, that consulting firm shall not be considered for any projects reviewed by that selection committee. The selection committee chairperson is to return the firm's response for that project with a letter of explanation.
- Pursuant to KRS 11A.050, each selection committee member who is an employee of the Commonwealth is to complete and file an annual statement of financial disclosure (**Exhibit 15-16**).



.0440 Term of Membership:

The following requirements apply:

- Ø Any individual appointed to serve in a pool from which selection committee members are drawn is to serve in the pool for an initial one-year term and may be reappointed for another one-year term. The individual is to serve until a successor is qualified and appointed. At the conclusion of service in a pool, that individual is to be prohibited from service in a pool until a year has elapsed. A successor or a replacement, in the case of a vacancy in the pool, is to be appointed in the same manner as the initial appointee.
- Ø The selection committee members appointed by the director of the user division monitoring the work are to serve on a selection committee for a specific project or group of projects for the duration of the selection committee's participation in the project or group of projects to which the members were appointed. The duration is defined as follows: from when a project or group of projects appears in the procurement bulletin until such time the Legislative Research Commission's Personal Services Contract Review Subcommittee approves that project or group of projects and the consultant(s) is issued a Notice of Approval for Payment.
- Ø Any individual appointed by the Auditor of Public Accounts to serve on selection committees is to serve an initial one-year term and may be reappointed for another one-year term. The individual is to serve until a successor is qualified and appointed. At the conclusion of service, that individual is to be prohibited from serving on a selection committee until a year has elapsed. A successor or a replacement, in the case of a vacancy, is to be appointed in the same manner as the initial appointee.

.0450 Establishment of the Pool of Professional Engineers from the Transportation Cabinet: The State Highway Engineer is to annually request voluntary applications from the professional engineering staff in the Transportation Cabinet for availability to serve in the pool of six professional engineers. The State Highway Engineer, or designee, is to review all applications and submit a list of no more than ten applications from which the Secretary is to appoint a pool of six to serve for one year. All six of the engineers are to be employees of the Transportation Cabinet and registered professional engineers of the Commonwealth. A person serving on the Professional Engineering Services Selection Committee from this pool is not eligible to also serve on the same selection committee as a representative of a user division specified in **Section 15-04.0420**.



15-04.0500 ORGANIZATION OF PROFESSIONAL ENGINEERING AND RELATED SERVICES SELECTION COMMITTEE

Upon receipt of written approval from the Secretary of Transportation to announce the Cabinet's need for a consultant to perform professional engineering and related professional services, the Director, Division of Professional Services, is to organize a Professional Engineering Services Selection Committee for each project (or group of projects) to be included in the procurement bulletin. This committee shall evaluate responses to the announcement for professional engineering and related services and select and rank the three most-qualified firms.

.0510 Committee Staff: The Division of Professional Services is to provide the committee with administrative and technical support and office supplies. The Secretary of Transportation is to designate suitable quarters for the committee in Frankfort.

.0520 Standards of Conduct: All members of the committee are to comply with the "Executive Branch Code of Ethics" (**Exhibit 15-01**) established in KRS Chapter 11A. All members of the committee are to scrupulously comply with the letter.

.0530 Orientation for Selection Committee Members: All persons serving on the committee or in a pool for a selection committee are to receive from the Division of Professional Services an orientation packet that contains:

Ø A copy of all applicable statutes and regulations

Ø A copy of KRS Chapter 11A financial disclosure form, instructions and applicable regulations regarding the "Executive Branch Code of Ethics" (**Exhibit 15-01**), and *HB 242* (**Exhibit 15-04**)

Ø A TC 40-6 form, "*Ex Parte*" Disclosure (**Exhibit 15-18**)

Ø Copies of the TC 40-8 form, *Listing of Responding Firms* (**Exhibit 15-14**)

Committee members are to be provided access to a *Professional Services Guidance Manual*.

All persons serving on a committee are to be provided with and have access to the necessary and applicable prequalification status of any firm that has responded to an announcement for engineering and related services.

15-04.0600 COMMITTEE MEETINGS

The meeting of a Professional Engineering and Related Services Selection Committee is to be called by the Director of the Division of Professional Services for the purposes of:

Ø Electing a chairperson and a vice-chairperson, who are to hold their positions for the duration of the selection committee's participation in a project or until their services as members of the committee cease. The meeting to select the consultant or consultants is to consist of a minimum of four of the five voting members to conduct business.



- Ø Discussing the certified list of firms shown on the TC 40-8 form, *Listing of Responding Firms (Exhibit 15-14)*, that responded to the announcement by the deadline given
- Ø Committee members will previously have been provided with the following:
 - The prequalification status for each responding firm and its project teams
 - Copies of the firms' responses
 - The announcement of the request for proposal
 - The request for proposal (if different from above)
 - A TC 40-4 form, *Certification of Confidentiality (Exhibit 15-17)*, requiring all committee members' signatures
 - Other information provided by the user division pertinent to the selection of the best-qualified firm for the project
- Ø Discussing the future conduct of the affairs of the selection committee

Policy for committee meetings are as follows:

- Ø If necessary, meetings of the committee may be called by the chairperson at a mutually convenient time during normal working hours at least one week in advance.
- Ø Special meetings may also be called upon consensus of four of the voting members with a majority of the merit system employee representatives of the committee.
- Ø All motions and decisions require a simple affirmative vote of all members present for passage.
- Ø A quorum for the meeting is to be four of the five voting members. Voting by proxy is not allowed.
- Ø The selection committee is to meet in executive session to discuss and evaluate all responses to the advertisement that were received in a timely manner.
- Ø Minutes of all committee meetings are to be taken, and the public is to be permitted access to these minutes after the contract has been awarded and the selected consultant is issued a notice of approval for payment for the project.



15-04.0700 REVIEW OF RESPONSES

It is the intent that firms in all regions of the Commonwealth be given equal opportunity to be selected for a project by the Professional Engineering and Related Services Selection Committee and that all firms submitting proper responses within the stipulated time period be given fair and impartial consideration. The committee is to use the evaluation factors and relative weights indicated in the announcement for each project to screen all consultant responses received in proper form. The evaluation factors and weights may vary by project; therefore, the announcement for that project is to indicate what they are. The evaluation system used for each project is to conform with all applicable federal and state laws and administrative regulations.

Before the selection committee meeting to determine and rank the three most-qualified firms, each voting committee member is to review all responses certified to the committee in accordance with **Sections 15-04.0330** and **15-04.0340**. Using the weighted evaluation factors that appeared in the advertisement, each committee member is to preliminarily evaluate and numerically rate each firm. These evaluations and ratings are to be considered preliminary and confidential working documents and are not to be available to the public.

In executive session the members of the selection committee are to discuss the responses and their evaluations and ratings of the responses. Using the weighted evaluation factors that appeared in the announcement in the procurement bulletin, the committee is to determine the three most-qualified firms and develop a ranking of the three firms.

The committee review procedure is as follows:

1. In making this determination, each committee member is to identify the three firms he or she has ranked as the most-qualified. Every member's choices are to be placed on a short list. Committee members are to have the opportunity to provide insight into why they believe each firm should or should not be selected for the project.
2. After review and discussion of all firms on the short list with regard to their qualifications and the quality of their proposals, the committee may, by a consensus of the members, eliminate firms from further consideration for the project.
3. After consideration of the evaluation factors, the committee is to vote by secret ballot to individually rank each of the remaining firms.
4. The committee is then to review and discuss the new compilation of short-listed firms identified by the secret ballot. The selection committee may, by consensus, eliminate any firm from further consideration.
5. If at the end of this process more than three firms remain under consideration, the selection committee is to repeat the above process until only three firms remain for consideration.
6. After consideration of the evaluation factors, the committee members are to vote by secret ballot to individually rank the three remaining firms.



7. If a selection committee vote results in a tie between two firms, one of which is to perform more of the work tasks in Kentucky than the other, the committee is to rank the former firm one place ahead of the latter on state-funded projects.
8. In case of a tie rating for one of the three most-qualified firms where the work performed in Kentucky is equal or it is a federally funded project, the selection committee is to again discuss and then reevaluate the firms that had the tie ratings until the tie is broken.
9. If the selection committee elects, it may interview any of the responding firms to aid in its determination of the most-qualified firms.
10. The committee is to compile and show on the TC 40-18 form, *Committee Ranking to Determine the Three Short-Listed Consultant Firms* (**Exhibit 15-13A**), the list of the three firms determined to be the most-qualified and the ranking of these three firms as determined by secret ballot. Copies of the TC 40-18 form are to be available to the public after the selected firm receives notice of approval for payment from the Division of Professional Services.

Selection committee members and their administrative support staffs are prohibited from discussing the responses or ranking of consultants outside the committee meetings except for answering general procedural questions. Selection committee members are to complete and sign the TC 40-6 form, *"Ex Parte" Disclosure* (**Exhibit 15-18**), which discloses to the other selection committee members *ex parte* communication between a committee member and a firm responding to the procurement bulletin for that particular project.

If a firm requests a debriefing for a project selection, the selection committee as a whole is to meet with the firm at a mutually agreeable time. Individual committee members are not to debrief a consultant. Requests are to be addressed in writing to the Director of the Division of Professional Services, and debriefings are not to take place until the selected firm receives a notice of approval for payment in accordance with **Section 15-05.1100**.

The debriefing policy is as follows:

- Ø Requests are to be in writing or by e-mail within 30 days of the selection date.
- Ø Project managers identified in a request or individuals submitting requests are the only permitted consultant representatives at the debriefing.
- Ø Marketing of the firm or employees during the debriefing is not permitted.
- Ø A debriefing is to last no longer than 30 minutes.
- Ø A firm that is the first-, second-, or third-selected consultant for a project may not request a debriefing on that project.
- Ø Each firm is limited to one debriefing per calendar year.
- Ø A debriefing is not to be granted if a consultant has been selected for a project within one year of the request date.



- .0710 Review of Responses for Statewide Services:** For committee reviews involving statewide services advertised in accordance with **Section 15-04.0311**, the committee is to rank the number of top-ranked firms as specified in the procurement bulletin and may select a second- and third-ranked firm, but a minimum of three firms is to be ranked. Fee proposals are to be requested in accordance with **Section 15-04.0810** from each firm that is ranked.

15-04.0800 NOTIFICATION OF SELECTED FIRM

The Chairperson of the Professional Engineering and Related Services Selection Committee is to notify the Director of Professional Services of the firms determined by the committee to be the three most-qualified and the order of their ranking. The director, or designee, is to notify the top-ranked firm of its selection. The division is to send to all firms that responded to the announcement in a timely manner a letter advising them of the three most-qualified firms, the rankings of the three firms determined to be the most-qualified, and the negotiations procedure with the highest-ranked firm.

- .0810 Submittal of Fee Proposal:** The Division of Professional Services is to notify by letter the top-ranked firm of its selection for the project. The selected firm is to be asked to meet with Cabinet representatives in accordance with the schedule identified in the procurement bulletin to discuss in detail the scope of services to be provided by the consultant for the project. After this meeting the consultant is to send a copy of the items and units of work to the Cabinet representatives as follows (unless otherwise agreed):
- Ø **For roadway design**, a description of the work units, including all sub-consultants, to **District and Central Office Highway Design personnel**
 - Ø **For structure design**, a description of the structure to be designed, including but not limited to type, length, span arrangement, curves, skew, and pilings, based on preliminary geotechnical information and any other pertinent considerations, including all subconsultants, to the **Division of Bridge Design**
 - Ø **For planning studies**, a description of the work units, including all subconsultants, to the **Division of Planning**
 - Ø **For environmental assessments**, a copy of the hours worked to achieve each task, including those of all subconsultants, to the **Division of Environmental Analysis**
 - Ø **For geotechnical assessments**, a copy of the fee proposal and work units, including all subconsultants, that qualify the tasks to be performed to achieve the geotechnical services as determined at the prenegotiation meeting to the **Division of Materials, Geotechnical Branch**
 - Ø **For bridge maintenance work**, a description of the work units and type of equipment, including all subconsultants, that are anticipated to the **Division of Maintenance, Bridge Preservation Branch**

The firm is to submit to the Division of Professional Services a fair and reasonable fee proposal with information containing job classification, work distribution, pay rates, subconsultants, and direct expenses.



15-04.0900 CERTIFICATION OF CONFORMITY WITH THE PROCUREMENT PROCESS


First, the Secretary of Transportation, the Director of the Division of Professional Services, or designee—as the negotiator for the project—and each voting member of the Professional Engineering and Related Services Selection Committee is to be supplied with a TC 40-10 form, *Certification of Conformity with Procurement Process* (**Exhibit 15-21**), and a copy of the proposed separate contract before the contract is submitted to the Legislative Research Commission (LRC) Personal Services Contract Review Subcommittee.

Those listed above are to sign these separate certificates certifying that to the best of their knowledge they are either aware or unaware of circumstances that may constitute a violation of the procurement process and a statement affirming that responding firms in all regions of the Commonwealth were given equal consideration for selection.

Finally, the representative of the Auditor of Public Accounts is to prepare and file a report with the Personal Services Contract Review Subcommittee certifying that the applicable procedural provisions were or were not met.

These certificates are to be kept in the project file and are to be made available to LRC's Personal Services Contract Review Subcommittee upon request. The public is not to be denied access to these certificates.

2 2 2

 PROFESSIONAL SERVICES	<i>Chapter</i> 15-05
	<i>Subject</i> Contracting

15-05.0100 CONTRACTING FOR PROFESSIONAL ENGINEERING AND RELATED SERVICES

.0110 Purpose: To outline policies and procedures for negotiating and contracting for professional engineering and related services

.0120 Policy: In negotiating and contracting for professional engineering and related services, the Transportation Cabinet is to follow the policies set forth in KRS 45A for the processing of contracts and contract modifications. The Transportation Cabinet is to strive to negotiate fair and reasonable prices for all services.

15-05.0200 PREPARATION OF CABINET ESTIMATE FOR CONTRACTS WITH PROFESSIONAL FIRMS

.0210 Purpose: To prepare a reasonable estimate of the cost of the required services

.0220 Policy: When contracting for professional engineering and related services with a firm, the Cabinet is to prepare an estimate of the resources necessary to complete the project.

.0230 Cabinet Estimates for Contracts with Professional Firms: After the Division of Professional Services requests a proposal and fee estimate from the firm, the user division is to prepare an estimate of resources required to complete the project. The user division is also to discuss the project with other divisions and request resource estimates from them as necessary.

.0231 Coordination of Resource Estimates: The user division shall request all of the resource estimates from other divisions as necessary. The information provided in the request is to be based on project information available and the user division's best estimate of the project requirements.

All resource estimates are to be sent directly to the Division of Professional Services.



When requested, the **Division of Bridge Design** is to prepare estimates of man-hours required for the design of bridges, culverts, etc., and forward them to the Division of Professional Services. Information provided to the Division of Bridge Design by the consultant on behalf of the user division is to include:

- Ø A list of all structures required for concurrence by the Division of Bridge Design
- Ø For bridge structures, information regarding span lengths, height, horizontal or vertical curvature, road class, and any particular problems with vertical clearance
- Ø For reinforced concrete culverts requiring structural design, size of culverts and any culvert features such as a varying thickness on the top slab, a special inlet, or angles in the barrel
- Ø Any retaining walls
- Ø Any other items requiring structural design

The **Division of Traffic** is to prepare resource estimates for striping and signing plans, signal plans, and lighting plans. Available information such as the size of the facility to be lighted, the number of signal locations, and the probability of integrated signs are to be included with the request from the user division.

The **Division of Transportation Planning** is to prepare resource estimates for project planning as determined at the scoping meeting with other Department staff and the consulting firm.

The **Division of Environmental Analysis** is to prepare resource estimates for environmental disciplines as determined at the scoping meeting with other Department staff and the consulting firm.

The **District Transportation Engineering Branch Manager for Preconstruction** or the staff member preparing the estimate is to prepare the resource estimates for field surveys and office roadway design work.

The **Division of Materials** is to prepare an estimate of unit prices and quantity estimates for geotechnical services when requested. The staff member from the user division preparing the Department's man-hour estimate is to provide to the Division of Materials the available information on alignment and profile.

The **Division of Construction** is to prepare an estimate of the man-hours, costs, and profit for construction engineering and inspection services as determined at the prenegotiation meeting with other Department staff and the consulting firm.



The **Division of Operations** is to prepare an estimate of the man-hours, costs, and profit for bridge maintenance inspection services as determined at the scoping meeting with other Department staff and the consulting firm.

The **Division of Real Property** is to prepare a resource estimate for services involving the design in rest areas.

15-05.0300 ANNUAL AUDIT OF PROFESSIONAL FIRMS

.0310 Purpose: To specify procedures to be followed by professional firms for determining audit information for use in determining fair and reasonable prices for all services.

.0320 Policy: Professional firms are to allow the Transportation Cabinet access to all financial information necessary to determine a firm's direct wage rates, indirect cost rates, overhead, and direct project charges that are not included in overhead rates.

The following limits shall apply:

- Ø For the purpose of computing direct wage rates, the maximum salary for a principal or partner of a professional firm is \$100,000 per year (\$48.08 per hour for 2,080 hours per year). This amount cannot be escalated.
- Ø For the purpose of calculating overhead and administrative charges, the principal or partner is limited to a maximum of \$100,000 per year.
- Ø The maximum direct hourly rate for any employee of the firm is \$43.27 per hour. This amount cannot be escalated.
- Ø The maximum allowable overhead rate is 150 percent.
- Ø If not included in a firm's overhead, other direct expenses for firm employees or survey crews are limited to the following items incurred from an office in Kentucky or the border of Kentucky nearest the firm's office and are not to exceed the maximum pursuant to 200 KAR 2:006.
 - Printing of reports for distribution external to the Cabinet—estimated cost from printer per document
 - Travel for survey crew—travel time to and from job site in hours multiplied by survey crew wage rate, multiplied by 1.3 for salary additives
 - Special equipment that is project-specific
 - Capital cost of money if applicable
 - Personal computer time—actual audited cost up to maximum of \$15 per hour



- Ø Travel expenses for all employees of a firm shall be limited to those incurred from a firm's office located in Kentucky or the border of Kentucky nearest the firm's office.
- Ø For the purpose of computing audited average hourly pay rates for all full-time classifications, the number of annual base available hours per year is 2,080.

.0330 Financial Records: All firms are required to maintain financial records in accordance with Federal Acquisition Regulation 48 CFR, Chapter 1, Part 31. All firms are to maintain payroll time records for all employees, including principals.

.0340 Preparation of Audit Report: Upon request annually by the Division of Professional Services, the Department of Fiscal Management, External Audit Branch, is to analyze the financial information of a firm and determine the appropriate wage rates, overhead rate, and direct project charges to be used for a firm. If the firm has been audited recently by a federal, state, or local government agency and desires the Cabinet to utilize that audit for its overhead rate, the firm must provide the audit(s) to the External Audit Branch before its scheduled audit.

If the Transportation Cabinet has not audited the firm in the previous 12 months, the last available audit may be used for determination of the fee specified in the contract. This audit may be used with the understanding that a contract modification is to be processed if an audit by the Cabinet reveals substantial differences in overhead rate, wage rates, or direct project expenses.

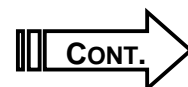
If the firm has a current audit of sufficient detail accepted by a federal, state, or local government agency and desires that the Transportation Cabinet utilize that audit for establishment of its overhead rate, the firm is to provide the audit report to the Transportation Cabinet prior to the scheduled audit. The Division of Professional Services may use the overhead rate, wage rates, and direct project expenses from that audit in negotiating a fee while awaiting review by the Department of Fiscal Management. This audit may be used with the understanding that a contract modification is to be processed if an audit by the Cabinet reveals substantial differences in overhead rate, wage rates, or direct project expenses.

.0341 Copy of Audit Report to Firm: After the issuance of an audit report for a firm to the Division of Professional Services, the division is to provide the firm with a copy of the report.

.0342 Firm's Appeal of Audit Report: If the firm disagrees with the audit report, the firm may, within 30 days of the date of the letter, appeal any part of the report to the Audit Review Committee in accordance with the Cabinet's *General Administration Guidance Manual*.

15-05.0400 METHODS OF CONTRACTING WITH PROFESSIONAL FIRMS

.0410 Purpose: To use the most acceptable method of contracting for professional engineering and related services



.0420 Policy: The following methods of contracting with professional firms shall be acceptable:

- Ø Lump sum
- Ø Cost plus a fixed fee
- Ø Specific rates of compensation
- Ø Cost per unit of work

.0430 Lump Sum: When the user division chooses lump-sum contracting, the firm is to present to the Division of Professional Services a statement showing the probable cost for the elements of work and the expected operating margin. This statement is to include a supported breakdown of the direct and indirect costs and the subconsultant costs the firm expects to incur. The method of dividing the project into work units and the calculation of related time units are to be such that the estimate can be easily reviewed.

The Division of Professional Services and the user division are to verify the supporting documentation before recommending the contract for approval. The documentation is to include:

- Ø Reasonableness of the amount proposed and consideration of the degrees of risk and responsibility to be assumed by the professional firm
- Ø The extent, scope, complexity, character, and duration of the required services
- Ø Professional and financial investments required of the firm
- Ø The firm's normal expected return for such services
- Ø Conditions under which the professional firm is expected to perform
- Ø The Cabinet's estimate of the appropriate amount for the services required
- Ø The Cabinet's findings on the basis of experience and knowledge

.0440 Cost Plus a Fixed Fee: When the Cabinet uses the cost-plus-a-fixed-fee method of contracting, an upper limit of payment of actual cost is to be established that cannot be exceeded without obtaining Cabinet approval. During negotiations the Division of Professional Services is to be responsible for establishing the upper limit, along with the fixed fee to be paid to the professional firm for the services required. The division is to establish the fixed fee and upper limit on the basis of past experience gained from negotiations of similar projects, judgment regarding scheduling and complexity of work, and the user division's estimates.



.0450 Specific Rates of Compensation: The Division of Professional Services is to document the basis on which the amount specified as the upper limit or upset limit was established. The agreement is to contain provisions that permit adjustment to this upper limit when the firm establishes, and the user division agrees, that there has been or is to be a significant change in the:

- Ø Scope, complexity, or character of the services to be performed
- Ø Conditions under which the work is required to be performed
- Ø Duration of the work if the change from the time period specified in the agreement for completion of the work warrants such adjustment

In the case of statewide agreements under which there are to be subsequent individual authorizations, the establishment of a maximum amount is not required. A maximum amount, however, is to be established for each of the individual authorizations.

.0460 Cost Per Unit of Work: Using this method, the professional firm is to be paid on the basis of units completed. This method of contracting is appropriate when the extent of the work cannot be definitely defined but cost of the work per unit may be determined in advance with reasonable accuracy.

15-05.0500 CONTRACT NEGOTIATIONS WITH PROFESSIONAL FIRMS

A proposal using this method of contracting is to be supported in the same manner as that indicated for the lump-sum method used for professional firms.

Except for an individual acting as a professional firm, the specific rates of compensation are to include:

- Ø Direct salary costs
- Ø Salary additives
- Ø Indirect costs
- Ø Net fee

The agreement of supporting data shall specifically identify these costs.

Other direct costs may be included as an element of a specific rate or as independent cost items.

.0510 Purpose: To negotiate a reasonable fee with the professional firm for engineering and related services required.



.0520 Policy: The Director of the Division of Professional Services, or designee, is the designated negotiating agent for the Transportation Cabinet, Department of Highways, for engineering and other related services and is to be designated as the procuring officer in accordance with KRS 45A. The negotiating agent is to strive to negotiate all contracts and contract modifications for engineering and related services at a fee that is fair and reasonable to both the Commonwealth and the Consultant.

.0521 User Divisions of the Transportation Cabinet Outside the Department of Highways: For professional engineering and related services requested by user divisions within the Transportation Cabinet but outside of the Department of Highways, that user division is responsible for negotiating the fee. (In this case, whenever the procedures of this section specify the Division of Professional Services, the user division is to be substituted.)

.0522 Standards of Conduct: All employees of the Transportation Cabinet negotiating for professional engineering services selection are to comply with the *Executive Branch Code of Ethics (Exhibit 15-01)*, established in KRS Chapter 11A. All Cabinet employees negotiating contracts are to scrupulously comply with both the letter and the spirit of the Cabinet's Official Order regarding *Conflict of Interest (Exhibit 15-02)*.

.0530 Proposal and Fee Estimates: The professional firm is to submit its proposal and fee estimate to the Division of Professional Services. The proposal submitted by the firm is to include one of the following:

- Ø A statement that the payment shall be based on the percentage of work completed
- Ø The proposed project milestones and corresponding maximum percentage payments, together with a breakdown of the estimated fee for performing the work

The breakdown is to include:

- Cost of materials
- Direct salaries
- Overhead
- Payroll activities
- Other direct costs
- Indirect costs
- Subconsultant costs
- Profit
- Use of DBE firms, if applicable

Proposed milestones and percentage of payments should accompany the proposal and fee estimate.



The Division of Professional Services is to analyze the proposal and may confer with the Deputy State Highway Engineer, State Highway Engineer, and others regarding the proposal, as necessary. The proposal is to be used as a basis for further negotiation of the professional services agreement.

Unreasonable or deliberately inflated proposals are to be rejected and are cause for termination of negotiation in accordance with **Section 15-05.0581**.

.0540 Audit Assurance for Contracts Other Than Lump Sum: For contracts that are to be executed using a method of compensation other than lump sum, the professional firm is to use an accounting system that segregates and accumulates reasonable, allocable, and allowable costs to be charged to a contract for an audit by the External Audit Branch of the Department of Fiscal Management.

.0550 Use of Subconsultants: If a firm desires to utilize the services of a subconsultant to perform any part of the work, the firm is to, at the time of negotiations, submit a fee proposal for the amount of work to be subcontracted. The fee proposal is to be based on the audited overhead and wage rates for the subconsultant.

Subconsultants are to be prequalified with the Cabinet to perform the services. Prior approval from the director of the Division of Professional Services or designee is necessary.

If a firm desires to utilize a subconsultant to perform part of the work after a contract is approved and notice to begin work is given, the firm is to request a contract modification in accordance with Section 15-06.0210. The request is to identify the tasks and corresponding negotiated man-hours to be subcontracted and the fee revision, using the subconsultant's overhead, wage rates, and indirect expenses.

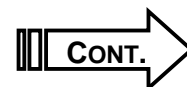
A firm awarded a contract for engineering and related services with the Transportation Cabinet is to perform at least 50 percent of the dollar value of the work for the project. If circumstances exist that warrant subcontracting more than 50 percent of the work for the project, the Director of the Division of Professional Services may, upon recommendation by the user division, grant a waiver of the requirement that 50 percent of the work be performed by the prime firm.

.0560 Operating Margin for Contract Negotiations:

.0561 Lump Sum: Not more than 15 percent when the total direct labor costs plus overhead cost for a contract (including all contract modifications) are less than \$2 million

For a contract with a total direct labor cost, plus overhead cost, of or exceeding \$2 million, the operating margin shall be 10 percent. The subconsultant's fee negotiated as part of the contract shall not be counted against the first \$2 million.

.0562 Cost Plus Fixed Fee: A lump sum not to exceed 10 percent of the estimated cost at the time of the execution of the agreement



- .0563 Unit Price:** Not more than 15 percent of the estimated unit cost at the time of execution of the contract

The operating margin is to be allowed only on the negotiated direct labor and overhead costs regardless of the type of contract.

- .0570 Comparison of Fee Estimates:** The Division of Professional Services is to compare the firm's established fee with the Cabinet's estimate to determine both the reasonableness of the fee and areas of substantial differences that may require further negotiation.

- .0580 Negotiations with Professional Firms:** The Division of Professional Services is to negotiate with the professional firm to arrive at a reasonable fee and basis of payment, including incremental payments for completed work where appropriate, for the services to be performed under the contract.

- .0581 Unsuccessful Negotiations:** If the Division of Professional Services is unable to negotiate a satisfactory contract with the Professional Engineering Services Selection Committee's top-ranked firm at a fee that the negotiator considers to be fair and reasonable to the Commonwealth, the negotiator is to formally terminate negotiations with that firm. The Division of Professional Services is to notify, in writing, the firm and the chairman of the committee that negotiations have been terminated.

The Division of Professional Services is to then request a proposal and fee estimate from the firm ranked second-best-qualified by the Professional Engineering Services Selection Committee and proceed to negotiate. If negotiation with the second-ranked firm is unsuccessful, the Division of Professional Services is to notify, in writing, the firm and the chairman of the committee that negotiations have been terminated.

The Division of Professional Services is to then request a proposal and fee estimate from the firm ranked third-best-qualified by the Professional Engineering Services Selection Committee and proceed to negotiate. If negotiations are unsuccessful, the Division of Professional Services is to notify, in writing, the firm and the chairman of the committee that negotiations have been terminated.

The Director of the Division of Professional Services is to notify the Chairman of the Professional Engineering Services Selection Committee that a satisfactory contract could not be negotiated with any of the three selected firms. If the State Highway Engineer recommends proceeding with the project at this point, the procurement procedure shall start again from the beginning pursuant to **Chapter 15-04.0300**.

In such case, the user division is to review the project scope and submit a recommendation to the State Highway Engineer as to whether to re-advertise the project.



.0582 Minutes of Contract Negotiations: The firm is to keep written documentation of each negotiation meeting and submit the documentation to the Division of Professional Services in a specified format for approval and inclusion in the contract file. The public is not to be denied access to the documentation.

15-05.0600 PROJECT AUTHORIZATION

.0610 Purpose: To establish the authorization for the funding of the project and to establish uniform project numbers prior to processing the contract

.0620 Policy: The project authorization, implementing the TC 10-1 form, *Project Authorization (Exhibit 15-19)*, and the uniform project numbers are to be established prior to the processing of an agreement.

.0630 Procedure: The director of the user division, or designee, is to prepare the TC 10-1 form and, in coordination with the Program Management Staff of the State Highway Engineer's Office, secure the necessary approvals.

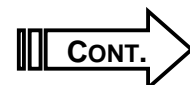
15-05.0700 PROOF OF NECESSITY (PON) AND CONTRACTS FOR AGREEMENTS WITH PROFESSIONAL FIRMS

.0710 Purpose: To obtain approval of contracts for professional engineering and related services

.0720 Policy: Before an agreement with a professional firm is binding, a Legislative Research Commission Personal Services Contract Proof of Necessity (PON), **(Exhibit 15-07)**, and a contract are to be prepared, approved, and signed by the Secretary of Transportation.

.0730 Preparation of the Contract: The Division of Professional Services is to prepare an agreement or a contract to cover the services to be provided, method and amount of payment, time of completion, and necessary special provisions. The agreement is also to incorporate by reference the General Provisions **(Exhibit 15-06)**, which set forth conditions and terms for the following:

- Ø Definitions of terms used
- Ø Authority of the Cabinet's project supervisor
- Ø General scope of the work
- Ø Items of work providing detailed guidance to the professional firm as to the required standards, manner of presentation, procedures to be utilized, etc.
- Ø Inspections required to review progress of work
- Ø Work notice, which stipulates when and under what conditions the firm may begin work



- Ø Time of completion, which defines the completion date and the conditions under which a time extension may be granted
- Ø Progress reports, which outline the interval and manner in which the firm is to report the work progress
- Ø Payment and general information as to the manner and frequency the firm may submit pay estimates
- Ø Extra work for fee adjustment, which furnishes general information as to what is considered to be extra work and the manner in which additional payment may be made to the professional firm for the work
- Ø Accuracy of professional firm's work, which outlines the responsibility of the firm regarding accuracy of work
- Ø Disputes, which stipulate the manner in which disagreements are to be resolved
- Ø Legal responsibilities, which require the firm to be familiar with and abide by all federal, state, and local laws, ordinances, etc., and outlining the responsibility of the firm in the event of negligence on the firm's part
- Ø Subletting of assignment, which outlines the conditions under which the professional firm may obtain the services of others to perform a portion of the work
- Ø Termination of agreement, which stipulates the conditions under which the contract may be ended
- Ø Federal cost principles contained in the federal procurement regulations
- Ø Warrants, which require the firm to certify that it has not and shall not:
 - Obtain the services of others to secure the contract or pay fees, gifts, etc., to any person or company in order to secure the contract
 - Have *ex parte* communication with selection committee members about a project from the date of the bulletin to the date of notification of selection
 - Divulge information except to the project supervisor and federal-aid projects without approval from the Transportation Cabinet
 - Violate federal restrictions on lobbying activities
 - Utilize the services of a Cabinet employee



Ø Requirements of the firm to certify that it shall:

- Maintain sufficient staff, equipment, etc., to perform the work
- Maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and make such materials available at its respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract

Note: These materials shall be available for inspection by the Transportation Cabinet, Federal Highway Administration, or any authorized representative of the federal government; and copies thereof shall be furnished if requested.

- Perform the work in such a manner to comply with Title VI of the 1964 Civil Rights Act, Title 49 CFR 21 (nondiscrimination, Governor's Code of Fair Practices), and other applicable federal and state laws and regulations
- Conform with the Americans with Disabilities Act, Public Laws 101-336

Ø Assurance that the firm's owner, principals, partners, or any immediate family member having an interest of 10 percent or more in any business entity involved in the performance of the contract have not contributed more than the amount specified in KRS 121.056(2) (**Exhibit 15-20**) to the election campaign of the current governor

.0740 Division of Professional Services' Review of Contract: Before sending the contract to the firm for signing, the Division of Professional Services is to:

- Ø Determine that the agreement provides for review at appropriate stages during the performance of the work
- Ø Determine that the agreement contains suitable provisions, where appropriate, for incremental payments for completed work and outlines the basis on which such payments may be made
- Ø Verify that the agreement provides that the professional firm and any subconsultants are to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and are to make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of the final payment under the contract

Note: These materials are to be available for inspection by an authorized representative of the state or federal government, and copies thereof are to be furnished.



- Ø Determine that the certification of the consultant and the certification of the Cabinet are referenced in contracts with consulting engineering firms for federal-aid projects
- Ø Compare the negotiated amount of the contract on highway projects with the funding identified within the Cabinet's current Six-Year Highway Plan

Note: If the amount of the agreement plus the anticipated Department's costs exceed the amount identified within the Six-Year Highway Plan by 15 percent or more, the Division of Professional Services is to notify the user division. Processing of the contract is not to continue until the user division notifies the Division of Professional Services to proceed.

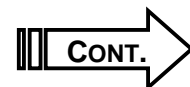
.0750 Preparation of the PON: The Division of Professional Services is to prepare the Proof of Necessity (PON), (**Exhibit 15-07**). The PON includes:

- Ø Descriptions of the nature and scope of work
- Ø Justification for work being performed by an outside firm
- Ø Estimated cost
- Ø Duration of the contract
- Ø Supervision
- Ø Required reports

If multiple phases of a project are planned, descriptions, including the estimated costs and duration of the contract, may be included in the PON for each phase.

15-05.0800 APPROVAL OF CONTRACT AND PROOF OF NECESSITY (PON)

- .0810 Distribution of Project Packet:** The Division of Professional Services is to assemble the PON, contract, and supporting information documenting the selection and negotiations processes in a packet and forward it through the Cabinet's approval process.
- .0820 Approval of Contract by Firm:** The contract and negotiation minutes are to be sent to the firm for the signature of an authorized representative. All original documents are to be returned to the Division of Professional Services.
- .0830 Cabinet Approval of Contract and PON:** The Director of the Division of Professional Services, or designee, is to sign the PON and the negotiation minutes and to initial the agreement before forwarding the project packet to the Office of Legal Services. That office is to review the contract for form and legality and then sign and forward the contract and project packet to the responsible Deputy State Highway Engineer. The Deputy State Highway Engineer is to review the PON, sign the contract, and forward the project packet to the State Highway Engineer, then to the Commissioner of Highways, and then to the Secretary of Transportation for their approvals.



.0831 Contract Approval by Other Cabinet Offices: Cabinet offices outside the Department of Highways are to work directly with the Office of the Secretary to obtain approval of their contracts for professional engineering and related professional services. Whenever these procedures refer to the Cabinet approval process, these offices are to send their contracts and other information directly to the Secretary for approval.

.0840 Required Federal Approval: When the project is subject to approval from the Federal Highway Administration (FHWA), the Division of Professional Services is to send the FHWA a packet consisting of:

- Ø Independent Kentucky Transportation Cabinet man-hour estimate(s)
- Ø Consultant fee proposal and man-hour estimates, including those of all subconsultants
- Ø Negotiated man-hours and corresponding fee
- Ø Selection documentation, including list of responses
- Ø A copy of the audit utilized for the firm
- Ø Negotiation minutes
- Ø Contract
- Ø Backup data (predesign conference minutes, scoping minutes, and other related correspondence)
- Ø A comparison of the Department man-hours versus those of the consultant versus negotiated man-hours

The Division of Professional Services is to transmit this information with a letter requesting the FHWA's approval after the Secretary of Transportation approves the contract.

If the FHWA does not approve the contract, the Secretary of Transportation may decide, after discussion with the State Highway Engineer and staff, to modify the contract, terminate the project, or ask for reconsideration by the FHWA.

.0850 Emergency Approvals of Contract: In an emergency, Cabinet approvals for the PON and the contract shall be expeditiously processed through the Cabinet.

When the Secretary signs the agreement, the contract becomes effective. The contract is to expire at the end of 120 days unless the LRC Personal Services Contract Review Subcommittee has approved it.



15-05.0900 FUND ENCUMBRANCE

.0910 Purpose: To have funds encumbered

.0920 Policy: Before a notice of approval for payment can be issued, funds are to be encumbered. The Division of Professional Services is to request fund encumbrance from the Division of Accounts. After funds are encumbered and the contract is approved by the Legislative Research Commission (refer to **Section 15-05.1000**), the notice of approval for payment is to be issued and the contract executed.

15-05.1000 LEGISLATIVE RESEARCH COMMISSION PERSONAL SERVICE CONTRACT REVIEW SUBCOMMITTEE

.1010 Purpose: To assure that the contract is acceptable to the LRC Personal Services Contract Review Subcommittee

.1020 Policy: The Transportation Cabinet is to cooperate with the LRC Personal Services Contract Review Subcommittee to achieve a professional services contract acceptable to the subcommittee and the Cabinet.

.1030 Transmittal Sheet: When the LRC Personal Services Contract Review Subcommittee receives a contract from the Office of the Secretary's liaison, it reviews the contract for completeness and proper signatures. The subcommittee sends the Office of the Secretary a transmittal sheet notifying the Cabinet that the contract has been received for review.

.1031 LRC Information: The following documents are to be forwarded to the Office of the Secretary for filing with the LRC Personal Services Contract Review Subcommittee:

Ø One copy of the contract

Ø One copy of the PON

Ø A statement affirming that responding firms in all regions of the Commonwealth were given equal consideration for selection and that documentation is available for inspection in the Division of Professional Services' project file

These certifications and statements are to be furnished upon the LRC Personal Services Contract Review Subcommittee's request.

Ø A separate report issued by the representative of the Auditor of Public Accounts

This report is to be prepared and filed with the LRC Personal Services Contract Review Subcommittee, certifying whether the applicable procedural provisions were met.



.1040 Notice to Proceed: When the Division of Professional Services receives a copy of the transmittal sheet indicating that the LRC Personal Services Contract Review Subcommittee has received the contract and project information for review, the division is to send a notice to proceed to the firm indicating that it may begin work but may not yet bill for services. For projects requiring Federal Highway Administration (FHWA) approval (**Chapter 15-05.0840**), notice to proceed is not issued until federal approval is obtained.

.1050 Review by Subcommittee: After the LRC Personal Services Contract Review Subcommittee examines and accepts the contract, its administrator prepares a notification of acceptance and forwards it to the Office of the Secretary's LRC liaison. The liaison is then to route a copy of the acceptance to the Division of Professional Services for filing in the contract file.

If the subcommittee objects to the contract, the administrator is to prepare a notification of objection and forward it to the Secretary. The Secretary is to review the objection and consult with the Office of Legal Services and the LRC liaison to decide who is to handle the appeal. The LRC liaison is to notify the Division of Professional Services of the objection and of the way the appeal is to be handled. The LRC liaison is then to route the notification of nonacceptance to the Division of Professional Services for the contract file.

.1060 Appeal to Subcommittee: If determination is made to appeal the decision of the LRC Personal Services Contract Review Subcommittee, the Transportation Cabinet is to present its appeal to the subcommittee. The Secretary of Transportation is to receive notification from the subcommittee of its acceptance or objection to the appeal. If the appeal is accepted, the Secretary is to forward the notification to the LRC liaison, who then shall notify the Division of Professional Services and route the notification to the branch for inclusion in the contract file.

If the subcommittee continues to object to the contract, it may recommend to the Cabinet that the contract be canceled or modified. Upon receipt of this recommendation, the Secretary is to consult with the LRC liaison, Office of Legal Services, the Director of the Division of Professional Services, the user division director, and others as may be appropriate. On the basis of these discussions, the Secretary is to decide either to cancel or modify the contract or to leave the contract as written. The LRC liaison then is to notify the subcommittee of the Cabinet's decision.

.1070 Contract Cancellation or Modification: If the contract is canceled, the Division of Professional Services is to notify the firm of the cancellation and take necessary steps to close the contract. If the contract is to be modified, the Division of Professional Services is to notify the firm and the user division of the necessary modifications and follow the contract modification and change order procedures (refer to Section 15-06.0200). When contract modifications have been approved through the required process, the contract is again sent to the LRC's Personal Services Contract Review Subcommittee for review.



.1080 Subcommittee Actions: If the LRC Personal Services Contract Review Subcommittee objects to the modification or if the Cabinet notifies the subcommittee that it will not modify or cancel the contract, the subcommittee may notify the House and Senate Appropriations and Review Committees of its objections.


.1090 House and Senate Appropriations and Review Committees: The House and Senate Appropriations and Review Committees review the contract and decide whether to accept or object to the contract. If the contract is deemed acceptable, the committees notify the LRC Personal Services Contract Review Subcommittee of the acceptance. If the committees object to the contract, they notify the Cabinet, subcommittee, and Governor of the objections and forward the contract to the General Assembly for appropriate action.

15-05.1100 NOTICE OF CONTRACT APPROVAL

.1110 Notice of Approval for Payment: When the Division of Professional Services receives the approved contract, the Division is to issue a letter to the firm informing it that it may bill the Cabinet for charges incurred while working on the project. A copy of the letter is to be kept in the contract file maintained by the Division of Professional Services.

.1120 Projects Involving Federal Funds: If the project requires Federal Highway Administration (FHWA) oversight, a copy of the approved contract is to be sent to the FHWA for that agency's files.

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 PROFESSIONAL SERVICES	<i>Chapter</i> 15-06
	<i>Subject</i> Contract Administration

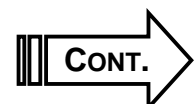
15-06.0100 CONTRACT ADMINISTRATION

- .0110 Purpose:** To monitor and review the process of the work to assure that the work meets the Cabinet's standards
- .0120 Policy:** All work performed under a professional services contract shall be subject to general supervision, direction, review, and approval by the Transportation Cabinet.
- .0130 Project Supervisor:** The director or office head of the user division is to assign a supervisor to each project or may serve as the project supervisor. The project supervisor is responsible for coordinating all activities with the firm and for providing necessary supervision through the duration of the contract.

This coordination includes scheduling, monitoring, controlling the firm's activities, and, when necessary, reporting the status of these activities to the appropriate authority. It also includes periodic reviews of the work to determine whether the work is in accordance with the agreement for the particular project. The type and extent of the reviews may vary from project to project and depend on the complexity and scope of the work.

Reviews by state personnel are to assure that the work is being performed in a satisfactory manner and in accordance with the agreement. Also, the reviews are to uncover any changes in the scope of the work, which may require a supplemental agreement and increased or decreased compensation. Any deviation from the agreement's terms on the part of the professional is to be brought immediately to the attention of the appropriate authority for review and advice.

- .0140 Subcontracting Special Work:** During the project the firm may subcontract with other firms to perform specialized services. The firm is to have prior approval of the Director of the Division of Professional Services, or designee, before utilizing the services of a subconsultant. The subconsultant is to be prequalified by the Cabinet if the services subcontracted are covered under **Chapter 15-03**.



If the services to be performed by the subconsultant are subject to prequalification by the Cabinet and were not identified in the original negotiations (or subsequent change orders), the firm is to submit a request for a fee adjustment for the man-hours to be performed by the subconsultant.

If the subcontractor services are not subject to prequalification procedures in **Chapter 15-03** and exceed \$25,000, they are to be reviewed by the External Audit Branch, Department of Fiscal Management, for reasonableness of cost. For subcontracts equal to or less than \$25,000, the negotiator may accept the rates and costs if they are reasonable and in line with past costs incurred for similar work.

- .0150 Responsibility for Pay Estimates:** The director of the user division or the project supervisor is responsible for verifying that the work has been accomplished in an acceptable manner and in conformance with the agreement before signing a pay estimate for the work completed.

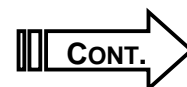
15-06.0200 CONTRACT MODIFICATIONS

- .0210 Purpose:** To modify a contract because of an increase or decrease in total compensation, a change in the scope of work to be performed, or a time extension

- .0220 Policy:** When it is determined by either the firm or the Cabinet that one or more of the following conditions are acceptable, a contract modification for a fee or schedule adjustment may be requested:

- Ø Change in termini or section
- Ø Addition of major phases of work to project scope
- Ø Modification of previously approved work resulting from factors beyond the control of the consultant firm
- Ø Modification of a major item if the item is designated as a basis of the original negotiations and the conditions for a change order consideration are identified in the original contract
- Ø Delay by the Department as outlined in each contract
- Ø Use of a subconsultant for services previously identified to be done by the firm or other subconsultant
- Ø Availability of current audit in accordance with **Section 15-05.0340.**

- .0230 Request for Contract Modification:** The Division of Professional Services or user division, district office, or the firm may originate a request for a contract modification.



- .0240 Negotiation of Contract Modifications:** When the director or office head of the user division determines the change is appropriate, the user division is to advise the firm in writing of the contemplated change in the scope, complexity, extent, character, or duration of the original agreement. When additional or reduced compensation is justified, the user division is to request a revised proposal from the firm.

The contract modification is to be negotiated using the same procedure as the original contract. (Refer to **Section 15-05.0500.**)

After a fee and any other contract modification have been negotiated, the Division of Professional Services is to prepare a TC 40-17 form, *Contract Modification* (**Exhibit 15-05**).

- .0250 Preparation of the Project Authorization Modification:** If additional funds are needed as a result of a contract modification, the director of the user division is to initiate a modification of the TC 10-1 form, *Project Authorization* (**Exhibit 15-19**). The user division is to notify the Division of Professional Services when the modified Project Authorization has been approved by the Secretary of Transportation so that the TC 40-17 form, *Contract Modification* (**Exhibit 15-05**), can be processed.

- .0260 Approval of Contract Modification:** After preparation of the *Contract Modification*, the Division of Professional Services is to send it to the firm for signature. After signing the *Contract Modification*, the firm is to return it to the Division of Professional Services. The director of the Division of Professional Services, or designee, is to initial the *Contract Modification*. The *Contract Modification*, the *Personal Services Contract Proof of Necessity* (**Exhibit 15-07**), and other supporting documentation are to be reviewed and signed by:

- Ø The director or project supervisor of the user division
- Ø The appropriate Deputy State Highway Engineer
- Ø The State Highway Engineer
- Ø The Commissioner of Highways
- Ø The Secretary of Transportation

After approval by the Secretary, the change order, proof of necessity, and other supporting documentation are to be returned to the Division of Professional Services for further processing.

For projects requiring FHWA oversight, the approved change order is to be sent to the Federal Highway Administration for approval.

- .0270 Fund Encumbrance:** After additional funds are encumbered, the Advice of Change in Contract stamped “funds available” is returned to the Division of Professional Services for processing.



- .0280 LRC Review, Notice to Proceed, & Notice of Approval for Payment:** Refer to **Sections 15-05.1000** and **15-05.1100**.

15-06.0300 COMPLETION OF CONTRACT

- .0310 Purpose:** To determine that all terms and conditions of the professional services contract have been met and to evaluate the quality of the firm's work
- .0320 Policy:** Upon completion of the contract, the Cabinet is to review the work performed to determine whether it meets the terms and conditions of the contract and evaluate the firm for future reference.
- .0330 Contract Completion:** The project supervisor or the director of the user division is to review the work performed by the firm, including any progress and final reports, to determine whether all terms and conditions of the contract have been met before processing the final voucher for payment or releasing the firm.
- .0340 Contract Performance Documentation:** Before approving the final invoice for payment, the director of the user division or the project supervisor is to evaluate the firm and prepare written documentation of the firm's performance on the project. The project supervisor is to collect the evaluations of other disciplines if applicable.
- .0341 Distribution of Performance Documentation:** The user division and other disciplines, if applicable, are to send the firm written documentation of the firm's performance on the project. Copies of the documentation are to be placed in the contract file maintained by the Division of Professional Services and in the firm's experience record file.
- .0342 Below-Average Rating:** The firm may appeal in writing a below-average rating to the user division director within 30 days of written documentation of the firm's performance on the project. The user division director is to notify the firm within 30 days from the firm's appeal of the director's decision regarding whether to revise the performance rating.

The firm may appeal in writing the user division director's decision to the chairperson of the Consultant Prequalification Committee within 30 days. The committee is to review all documentation relating to the firm's performance on the project. The committee may discuss the performance rating with the project supervisor or the firm. The committee is to notify the firm and the user division of its decision within 90 days from the firm's appeal.

If the firm's appeal is denied, it may appeal the decision to the State Highway Engineer within 30 days of written notice of denial of its appeal by the Consultant Prequalification Committee. The State Highway Engineer is to notify the firm of his or her decision within 30 days. The decision of the State Highway Engineer shall be final.



If the performance evaluation documentation is revised, the initial documentation is to be removed from all files and replaced with revised performance documentation.

- .0350 Audit Requested:** Prior to the final payment the Director of the Division of Professional Services, or designee, is to request the Department of Fiscal Management External Audit Branch to perform a final audit if appropriate.

The audit is to determine the following:

- Ø Total Allowable Contract Costs
- Ø Man-Hours by Classification
- Ø Estimated Operating Margins
- Ø Total Dollars to Be Paid to the Firm

All contracts utilizing a cost-plus-fixed-fee method of payment are to be audited.

- .0360 Final Report to the Federal Highway Administration:** The user division is to forward to the Federal Highway Administration (FHWA) a copy of all progress and final reports for federal-aid projects if required or requested by the FHWA.

15-06.0400 CANCELLATION OF CONTRACT

- .0410 Purpose:** To terminate a contract for professional services when the termination is in the best interest of the Cabinet
- .0420 Policy:** All professional service contracts are to include a provision for the termination of the agreements and are to allow for the cancellation of the contract by the Cabinet with proper notice to the firm.
- .0430 Cancellation:** When the Cabinet decides to cancel a professional services contract, the Division of Professional Services is to notify the firm of the cancellation and the reasons for the cancellation. The Cabinet shall be liable only for payment of services up to the date of cancellation of the contract.

15.06.0500 CONTRACT FILE

- .0510 Purpose:** To assure that proper records of professional services contracts are maintained
- .0520 Policy:** For all professional engineering and related services contracts, the Division of Professional Services is to maintain a complete record of all correspondence, meetings, forms, contracts, change orders, and other documents related to the contracts.



15-06.0600 ANNUAL REPORT

.0610 Purpose: To compile information concerning professional engineering and related services contracts made by noncompetitive negotiation for review by the General Assembly and the public upon request in compliance with KRS 45A

.0620 Policy: The Cabinet shall compile a report of all professional engineering and related services contracts made by noncompetitive negotiation within 90 days following the end of the fiscal year.

.0630 Preparation of Report: The Division of Professional Services is to compile a report of all contracts made by noncompetitive negotiation within 90 days following the end of the fiscal year. The report is to include the following information for each contract:

Ø Name of Firm

Ø Project Description

Ø Amounts of Contract and Change Orders

Ø Disadvantaged Business Enterprise (DBE) Percentages

Ø Paid-to-Date Balances

Ø Copies of Determinations and Findings Required by Provisions of the Model Procurement Code and Implementing Regulations

The Cabinet is to retain the report for 5 years and make the report available to the General Assembly and the public upon request.

15-06.0700 DBE REPORT

Each quarter the Division of Professional Services is to provide the Office of Minority Affairs the following information:

Ø All federally funded projects for which a contract or contract modification has been negotiated and a notice to proceed has been issued during the previous three months

Ø Names of all DBE firms that have been contracted or subcontracted for the projects identified above and the amounts

Ø The percentage of DBE participation for each contract and overall DBE percentage for the projects identified above

The Division of Professional Services is to provide year-end total information to the Division of Minority Affairs after the end of each federal fiscal year.




15-06.0800 RANDOM AUDIT OF COMPLETED CONTRACTS

Quarterly, the Division of Professional Services is to randomly select 10 percent of the lump-sum contracts completed during the previous three months for a post-audit by the Department of Fiscal Management regarding profit and man-hours by classification. The maximum number of contracts to be post-audited for any quarter is to be three, with a minimum of one.

15-06.0900 RECORDS MAINTENANCE

- .0910 Purpose:** To retain professional engineering and related services contract files for review and audit
- .0920 Policy:** Professional engineering and related services contract files, in addition to the professional records, are to be maintained as outlined in the Transportation Cabinet Records Retention Schedule.

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 PROFESSIONAL SERVICES	Chapter 15-07
	Subject Payments

15-07.0100 PAYMENTS TO FIRMS

- .0110 Purpose:** To pay firms for satisfactory work completed for the Cabinet
- .0120 Policy:** Before payment of a partial or final request for payment, the Cabinet is to review the work of the firm, including any progress or final reports, to ensure that the work for which the payment is to be made has been completed and that the terms and conditions of agreement have been satisfactorily followed.

15-07-0200 PARTIAL PAYMENTS

- .0210 Purpose:** To pay firms for satisfactory work completed to date.
- .0220 Policy:** When a request for payment is received, the Cabinet is to verify that the work for which payment is requested has been satisfactorily completed and that the terms and conditions of the agreement have been followed before making payment to the firm.
- .0230 Requests for Payment:** During the course of the project, progress billings are to be submitted by the firm as agreed upon in the contract. The firm is to submit to the chief district engineer, the director of the user division, or their designees a TC 61-408 form, *Engineers Pay Estimate* (Exhibit 15-22), or other request for payment documentation approved by the user division with a progress report as an invoice.

The chief district engineer, the director of the user division, or designee is to review the estimate, verify that the work has been completed as described in the document, sign the *Engineers Pay Estimate* or approved request for payment, and forward it to the Division of Accounts. The Division of Professional Services is to maintain in the contract file copies of the *Engineers Pay Estimate* or approved request for payment and progress report.



- .0240 Processing a Pay Document**—The Pre-Audit Section of the Division of Accounts is to receive the *Engineers Pay Estimate* or approved request for payment and is to audit the documents for accuracy and completeness.

The Division of Accounts is to assign a pay voucher number to the pay document and is to place it in a pending file until a check and warrant are received from the Office of the Treasury.

- .0250 Issuance of Check:** After receiving the check, warrant, and pay document from the Office of the Treasurer, the Division of Accounts is to review the check for accuracy. The Division of Accounts is to send the check to the firm, forward a copy of the transmittal to the originating division, and file the pay document and warrant in its files for future reference.

.0251 Filing of Transmittal: The user division is to maintain the transmittal copy in its contract files.

15-07.0300 FINAL PAYMENTS


- .0310 Purpose:** To pay the firm for satisfactory work completed

- .0320 Policy:** Final invoices and requests for payment are to be authorized only after all work has been reviewed and accepted, including any final reports prepared by the firm. All terms and conditions of the contract are to be satisfactorily met, and the final audit, if applicable, is to be performed prior to processing the final payment.

- .0330 Request for Final Payment:** Requests for final payment are to be processed after the successful completion of a contract (refer to **Section 15-06.0300, *Completion of Contract***). Final payments are to be processed by the Cabinet in the same way as progress or partial payments.

After reviewing the pay document, the director of the user division is to forward the pay document and performance evaluation documentation from all divisions involved in the project to the Division of Professional Services. The Director of the Division of Professional Services is to sign the final pay document and send it to the appropriate Deputy State Highway Engineer, who is to review the pay document, including the performance evaluation documentation, and sign it. The Deputy State Highway Engineer is to forward the pay document to the Division of Accounts. The Division of Accounts is to process the pay document in accordance with **Section 15-07.0240, *Processing of Pay Document***.

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 PROFESSIONAL SERVICES	Chapter 15-08
	Subject Selection of Other Professional Services

15-08.0100 SELECTION OF OTHER PROFESSIONAL SERVICES

.0110 Selection of Attorneys: Pursuant to the provisions of KRS Chapter 45A, the Transportation Cabinet may contract with the most qualified available attorney. If the Executive Director of the Office of Legal Services determines that outside legal services are necessary, the office is to prepare the required documentation and request for proposals. The Secretary of Transportation or the Executive Director of Legal Services may schedule interviews with attorneys responding to the advertised request for proposal to determine the attorneys' qualifications for further consideration. The Secretary of Transportation or the Executive Director of Legal Services is to make the contract award and negotiate a fair and reasonable compensation with the most qualified attorney pursuant to the provisions of KRS 45A.695.

.0120 Selection of Professional Firm to Provide Right-of-Way Services: When securing the right-of-way services of a professional firm, the Division of Right of Way uses the procedures specifically addressed in the following chapters of the *Right of Way Guidance Manual*:

Fee Appraisers	Chapter ROW-500
Fee Buyers	Chapter ROW-500
Court Witnesses	Chapter ROW-500
Valuation Witnesses	Chapter ROW-500
Acquisition Consultants	Chapter ROW-900

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PROFESSIONAL SERVICES

Chapter

15-0000

Subject

Table of Exhibits

EXHIBIT NUMBER	FORM TITLE	FORM NUMBER
15-01	Executive Branch Code of Ethics (23 pages)	(none)
15-02	Conflicts of Interest of Public Officers and Employees (2 pages)	(none)
15-04	House Bill 242 (8 pages)	(none)
15-05	Contract Modification (1 page)	TC 40-17
15-06	General Provisions (31 pages)	(none)
15-06A	Consultant Inspection Provisions (6 pages)	(none)
15-07	Legislative Research Commission Personal Services Contract Proof of Necessity (2 pages)	(none)
15-08	Consulting Engineer and Related Services Prequalification Application (18 pages)	TC 40-1*
15-08A	Consulting Engineer and Related Services Prequalification Criteria (33 pages)	TC 40-1 appendix

*Available on-line



EXHIBIT NUMBER	FORM TITLE	FORM NUMBER
15-09	Prequalification Requirements for Geotechnical Drilling Services (4 pages)	TC 64-540
15-10	Prequalification Requirements for Geotechnical Engineering Services (3 pages)	TC 64-541
15-11	Prequalification Requirements for Geotechnical Laboratory Services (2 pages)	TC 64-542
15-2	Response to Announcement for Engineering and Related Services as Prime Consultant (18 pages)	TC 40-15
15-12A	Subconsultant Qualifications for Response to Announcement for Engineering and Related Services (13 pages)	TC 40-15-sub
15-13	Engineering and Related Services Fee Proposal (1 page)	TC 40-2
15-13A	Committee Ranking to Determine the Three Short-Listed Consultant Firms (1 page)	TC 40-18
15-14	Listing of Responding Firms (1 page)	TC 40-8
15-15	Certificate of Understanding of Restrictions for Members of Professional Engineering or Related Services Selection Committee (1 page)	TC 40-9*
15-16	Statement of Financial Disclosure (4 pages)	(none)
15-17	Certification of Confidentiality (1 page)	TC 40-4
15-18	“Ex Parte” Disclosure (1 page)	TC 40-6
15-19	Project Authorization (1 page)	TC 10-1

*Available on-line



EXHIBIT NUMBER	FORM TITLE	FORM NUMBER
15-20	KRS 121.056 (1 page)	(none)
15-21	Certification of Conformity with Procurement Process (1 page)	TC 40-10
15-22	Engineers Pay Estimate (1 page)	TC 61-408
15-23	Campaign Finance Law Compliance (1 page)	(none)

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